

FILED  
COURT OF APPEALS  
DIVISION II

2012 NOV -5 AM 10:36

STATE OF WASHINGTON

BY

~~DEPUTY~~

COA# 42897-1-II

STATEMENT OF ADDITIONAL  
GROUNDS UNDER RAP 10.10(C)

STATE OF WASHINGTON,  
RESPONDENT,

V.

JOSE VALENCIA - HERNANDEZ,  
APPELLANT.

Appellant, Mr. Jose Valencia-Hernandez under observance of RAP 10.10(c) brings this argument to the Court's attention, and provides the subsequent citations in support of the alleged errors in his trial sentencing.

### Ground 1

Did the State err in its arrest of the appellant on the suspicion that he was "associated" with three people that were actually arrested by warrant at the premises of the Meadow Wood Apartments? Yes. The following support this:

The principals of said arrest were, in fact, Mr Armando Monteel, Mr. Ruiz Burgara, and Juan Jose Guzman Sanchez. RP at 1447. The Appellant, Mr. Hernandez was not only not at the scene, but had moved from the residence in

question. RP at 1745 (entire page) Karissa Courtway's recitation of her relationship with Llamas-Hernandez is explained and she avers to him not residing at the home (apartment, referred to as the "office" by law enforcement.)

The State arrested Llamas-Hernandez weeks later and bootstrapped the possession with intent to delivery by the mere fact that he had lived at the apartment previously, by his "association" of the three arrested, even in the fact that he was not present at the scene, and by his estranged girlfriend Karissa Courtway alleging that he might be there.

Yet the State, in its investigation "found a couple documents in the "office" that were associated with Monteel and Burgara RP at 1447. Bootstrap that to State's exhibit #136, "two wire - money wire receipts that I located in bedroom A", Sofianos RP at 1367. All the rest of pg 1367 is inclusive of reference to the "office." The receipts bear the names of Mr Monteel and Mr Burgara in State's exhibit #136.

At RP 1444 Sofianos testified to the fact that no receipts tie Llamas-Hernandez to the "evidence" used to arrest Burgara, Monteel, and Sanchez. There was also a DNA test done of these same

principals RP at 1449-50, yet DNA taken off a container as evidence was linked to a Mr. Richard Birch RP at 1450, not Llamas-Hernandez. Nor was any other of the "evidence linked to Mr. Hernandez.

Appellant thus argues that the State went outside the 1981 SRA sentencing grid in imposing a 160 month sentence for drugs that he did not possess, taken in evidence from an apartment that he did not reside in, and that the State provided no proof that Mr. Hernandez was a Party to these drugs at all. Mere association does not establish the probable cause to convict him outside the guidelines.

In fact, the State imposed an exceptional sentence and there is no "Stipulated Agreement." Under "Stipulated Agreement" written findings ensure the reasons for exceptional sentences are articulated, thus informing the defendant, appellate courts, the Sentencing Guidelines Commission, and the public the reasons for deviating from the standard range RCW 9.94A.105.

In the PRP of Breedlove 138 Wn2d 298 (1999) Id at 309  
" We also hold that a trial court imposing such a sentence has an independent statutory duty to make findings of fact which show the sentence imposed is consistent with the goals of the SRA of 1981. RCW 9.94A

(trial court's failure to enter findings could result in remand to a new trial.)

The State refers to, nor explains its exit from the 1981 SRA in the sentencing. Appellant thus suggests that the State violated the legislative intent of the 1981 SRA and thus he merits consideration for the State to modify his sentence into the grid at the lowest end, as the State failed to show any "evidence" tying Mr. Hernandez to the alleged crime.

This Statement of Additional Grounds I swear and attest to the truth within and will testify to same under the perjury laws of both State and federal jurisdictions.

Jose Valencia Hernandez, 301220, H2-B-41  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, Washington 98520

signed Jose Valencia Hernandez  
dated 11/1/2012

done this 1<sup>st</sup> day of November, 2012 at Aberdeen

c.c.: Court of Appeals  
c.c.: Brian Walker Law Firm, P.C.

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